IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5684 OF 2004.
IN
CRIMINAL APPEAL NO.1167 OF 2004.

Yasir Zaki Khan. ..Applicant.

Versus.

The State of Maharashtra. ..Respondent.

Mr. Aabad H.H.Ponda, advocate for the applicant.

Mr.B.H.Mehta, APP for the State.

CORAM: S.B.MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 23, 2004.

P.C.:

1. Heard Mr. Ponda, the learned counsel for the applicant and Mr. B.H.Mehta, the learned APP for the State.

2. The learned counsel for the applicant has taken us through the statements of the prosecution witnesses and pointed out that at the time of incident, dead body was found in the building below the staircase wrapped in the bedsheet at about 9 a.m. on 29/7/2002. There is evidence to show that the flat

where the accused/applicant was residing was locked and the applicant was not seen thereafter. It is further in the evidence of P.W.4 that the said flat was opened by the police behind and back of the applicant. All the incriminating articles have been found in the said flat after 10 days when the accused made a statement under section 27. There is also evidence to show that the bloodstained clothes were having fresh blood. Therefore, it is submitted that those were planted material. There cannot be fresh bloodstain on the clothes when the incident had taken place 10 days' earlier. The flat was opened behind and back of the applicant/accused which makes this theory of plantation of these articles in the flat No.102 belonging to the accused behind his absence possible one. Except recovery of these incriminating articles, there is no direct evidence to connect the applicant/accused with this incidence. No motive is brought on record. Dead person is unknown person and therefore, only evidence is under section 27. Prima facie it is a case where sentence should be suspended. Applicant was on bail during the trial. That also persuade us to grant bail to the applicant/accused. Hence following order.

ORDER

(i) The sentence passed by the Addl.Sessions Judge, Gr.Bombay dated 20/7/2004 in Sessions Case No.1076 of 2002 is hereby suspended till final disposal of the appeal.

(ii) The applicant/accused be released on bail on furnishing P.R.bond of Rs.20,000/- with surety in like amount. Applicant will give local surety.

(iii) The applicant/accused shall attend Versova Police Station once in a week.

(ANOOP V. MOHTA,J.) **(S.B.MHASE,J.)**

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